

RECEIVED
CENTRAL FAX CENTER
SEP 12 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 09/700,561
Inventor(s) : Gregory Ashton, et al.
Filed : November 16, 2000
Art Unit : 3761
Examiner : Michele M. Kidwell
Docket No. : AA315X
Confirmation No. : 6013
Customer No. : 27752
Title : Disposable Absorbent Article

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This Brief is filed pursuant to the appeal from the decision communicated in the Final Office Action mailed on April 12, 2006. A timely Notice of Appeal was filed on July 12, 2006.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

09/13/2006 MBINAS 00000063 162400 09700561
01 FC:1402 500.00 DA

Appl. No. 09/700,561
Docket No. AA315X
Appeal Brief dated September 12, 2006
Reply to Office Action mailed on April 12, 2006
Customer No. 27752

RECEIVED
CENTRAL FAX CENTER
SEP 12 2006

STATUS OF CLAIMS

Claims 1, 4, 5 and 7-10 are pending. Claims 2-3, 6, and 11-29 have been cancelled. Claims 1, 4, 5 and 7-10 stand rejected. Claims 1, 4, 5 and 7-10 are appealed. A complete copy of the appealed claims is set forth in the Claims Appendix attached herewith.

STATUS OF AMENDMENTS

On July 12, 2006, the Applicant filed an Amendment subsequent to the Final Office Action of April 12, 2006. In that Amendment, the Applicant amended independent claim 1 to present the rejected claims in better form for consideration on appeal. The Applicant is unaware of whether or not the Examiner has acted upon this Amendment. Dependent claims 4, 5 and 7-10 are as originally presented.

SUMMARY OF CLAIMED SUBJECT MATTER

Independent Claim 1, as currently amended, claims a disposable garment (Page 6, lines 7-11; Fig. 1, #20) having a front region (Page 6, line 28; Fig. 2, #26), a back region (Page 6, lines 28-29; Fig. 2, #28), and a crotch region (Page 6, lines 29-30; Fig. 2, #30) between the front region and the back region. The disposable garment includes a chassis (Page 8, line 7; Figs. 1 and 4, #41) having a topsheet (Page 6, line 28; Figs. 1, 3 and 4, #24), a backsheet (Page 6, line 28; Figs. 1, 3 and 4, #22) joined with the topsheet, and an absorbent core (Page 6, line 28-29; Figs. 3 and 4, #25) interposed between the topsheet and the backsheet.

Appl. No. 09/700,561
Docket No. AA315X
Appeal Brief dated September 12, 2006
Reply to Office Action mailed on April 12, 2006
Customer No. 27752

The chassis has a central panel (Page 7, line 10; Fig. 2, #8) having a waist edge (Page 7, line 23; Fig. 2, #190) and side edges (Page 7, line 23; Fig. 2, #191) and an ear panel (Page 7, lines 10 and 23-24; Fig. 2, #10; Fig. 6, #46) having a waist edge (Page 7, line 24; Fig. 2, #161; Fig. 6, #46A) and a leg opening edge (Page 8, line 5; Fig. 2, #153; Page 16, line 20; Fig. 6, #46B). The ear panel waist edge has a first lateral width (Page 17, lines 11-12 and 13-16; Fig. 6, #L2), and the ear panel leg opening edge has a second lateral width (Page 17, lines 9-11 and 13-16; Fig. 6, #L1), greater than the first lateral width (Page 17, lines 18-19).

The chassis further has a waistband panel (Page 7, line 10; Fig. 2, #6) in the front region and the back region. The ear panel extends laterally outwardly from each side edge of the central panel. (Page 7, lines 23-24.) The waistband panel extends longitudinally outwardly from the waist edge of the central panel and the waist edge of the ear panel. (Page 7, lines 25-27.)

The disposable garment includes a waist elastomeric material (Figs. 1 and 6, #57 and #59) joined to and extending continuously along the waistband panels in the front region and the back region so as to form a continuous extensible waistband (Fig. 1, #60) in the front region and the back region. (Page 8, lines 12-14.)

The disposable garment also includes a side elastomeric material (Fig. 8, #70) joined to the ear panel so as to form extensible ears. (Page 8, lines 11-12.) The side elastomeric material is disposed over substantially all of said ear panel to provide extensibility extending from said leg opening edge to said waist edge. (Page 16, lines 28-

Appl. No. 09/700,561
Docket No. AA315X
Appeal Brief dated September 12, 2006
Reply to Office Action mailed on April 12, 2006
Customer No. 27752

30.) The side elastomeric material and the waist elastomeric material are separate elements and are disposed so as not to overlap to each other. (Page 8, lines 14-16.)

The disposable garment further includes seams (Fig. 1, #32) joining the ear panel to a corresponding portion in the opposite front or back region so as to form two leg openings and a waist opening such that the extensible waistbands form a continuous extensible waist feature. (Page 34, lines 9-11.)

The Applicant argues dependent claims 4, 5 and 7-10 with independent claim 1.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1, 4, 5 and 7-10 are unpatentable under 35 U.S.C. § 102(b) over Von Gompel, et al. (EP 0 547 497 A2).

ARGUMENTS

Rejection of Claims 1, 4, 5 and 7-10 Under 35 U.S.C. § 102(b) over Von Gompel

The rejection of claims 1, 4, 5 and 7-10 under 35 U.S.C. § 102(b) over Von Gompel is improper, because the Final Office Action failed to establish anticipation, since the Von Gompel reference does not describe each and every claim limitation recited in the Applicant's independent claim 1.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.

Appl. No. 09/700,561
Docket No. AA315X
Appeal Brief dated September 12, 2006
Reply to Office Action mailed on April 12, 2006
Customer No. 27752

1987)." MPEP § 2131. The Applicant submits that the Von Gompel reference does not describe each and every claim limitation recited in the Applicant's independent claim 1.

The Applicant's independent claim 1, as currently amended, recites in part "an ear panel having a waist edge and a leg opening edge" wherein "side elastomeric material is disposed over substantially all of said ear panel to provide extensibility extending from said leg opening edge to said waist edge." Claim 1 also recites in part that a "waistband panel extends longitudinally outwardly from the waist edge of the central panel and the waist edge of the ear panel."

The Applicant notes that the specification and figures of the Application, as originally filed, describe and illustrate various aspects of the above-cited elements of the Applicant's independent claim 1. "The term 'panel' is used herein to denote an area or element of the pull-on diaper." (Application, page 7, line 6.) "The ear panel 10 has a waist edge 161." (Application, page 7, lines 24-25 and Figure 2.) "The waistband panel 6 extends generally longitudinally outwardly from and along the waist edge 190 of the medial panel 8 (i.e., central panel) and the waist edge 161 of the ear panel 10." (Application, page 7, lines 25-27 and Figure 2.)

The Final Office Action cited portions of the embodiment of Figure 5 of the Von Gompel reference against the ear panel element of the Applicant's independent claim 1. (Final Office Action, page 2, paragraph 2 – page 4, carryover paragraph.) The Final Office Action included a copy of Figure 5 of the Von Gompel reference, along with labels apparently provided by the Examiner to illustrate which portions of Figure 5 were cited against the ear panel element of the Applicant's claim 1. (Final Office Action, page 3.)

Appl. No. 09/700,561
Docket No. AA315X
Appeal Brief dated September 12, 2006
Reply to Office Action mailed on April 12, 2006
Customer No. 27752

The Final Office Action also stated that, for the Applicant's claim 1, "the examiner maintains the current rejection." (Final Office Action, page 5, line 12.) From the Applicant's review, that "current rejection" appears to be the following statement from the prior Office Action of November 1, 2005:

The examiner contends that the element 44 and the top of element 42 may be considered the extent of the ear panel and in that case Von Gompel provides a side elastomeric material that is disposed over substantially all of the ear panel and would ultimately provide the claimed extensibility.

(Page 6, lines 7-10.) The Applicant notes that the above-cited characterization appears to conflict with the characterization from the labels "waistband panel" and "waist edge" in the copy of Figure 5 in the Final Office Action.

The Applicant submits that "element 44 and the top of element 42" from the Von Gompel reference cannot be considered the extent of an ear panel as recited in part in the Applicant's independent claim 1, because this characterization does not provide that a "waistband panel extends longitudinally outwardly from the waist edge of the central panel and the waist edge of the ear panel" as recited in part in the Applicant's independent claim 1. In other words, if the top of element 42 from the Von Gompel reference is considered to be the top of an ear panel, then there would be no room for a "waistband panel" element as recited in claim 1 and as cited in the Final Office Action. (Page 3, copy of Figure 5.) Alternatively, if the bottom of element 42 from the Von Gompel reference is considered to be the top of an ear panel, then elastomeric material would not be "disposed over substantially all of said ear panel" as recited in claim 1 and cited in the Office Action of November 1, 2005. (Page 6, lines 7-10.) Therefore, the Von Gompel reference does not describe each and every claim limitation recited in the

Appl. No. 09/700,561
Docket No. AA315X
Appeal Brief dated September 12, 2006
Reply to Office Action mailed on April 12, 2006
Customer No. 27752

Applicant's independent claim 1. For this reason, the Final Office Action failed to establish anticipation of the Applicant's independent claim 1. As a result, the Applicant respectfully requests that the Board reverse the 102(b) rejections for independent claim 1 and dependent claims 4, 5 and 7-10 and allow these claims.

Even if "element 44 and the top of element 42" from the Von Gompel reference may be considered the extent of an ear panel as recited in part in the Applicant's independent claim 1, this characterization does not provide that a "side elastomeric material is disposed over substantially all of said ear panel" as recited in part in the Applicant's independent claim 1. From the Applicant's review, this characterization may provide an elastomeric material over two portions of such an ear, not over substantially all of such an ear. Therefore, the Von Gompel reference does not describe each and every claim limitation recited in the Applicant's independent claim 1. For this reason, the Final Office Action failed to establish anticipation of the Applicant's independent claim 1. As a result, the Applicant respectfully requests that the Board reverse the 102(b) rejections for independent claim 1 and dependent claims 4, 5 and 7-10 and allow these claims.

Even if "element 44 and the top of element 42" from the Von Gompel reference may be considered the extent of an ear panel with elastomeric material disposed over substantially all of said ear panel, this characterization does not provide an ear panel having "a leg opening edge" as recited in part in the Applicant's independent claim 1. From the Applicant's review, such an ear would end at the bottom of element 44 and would not extend down far enough to include a leg opening. Therefore, the Von Gompel reference does not describe each and every claim limitation recited in the Applicant's

Appl. No. 09/700,561
Docket No. AA315X
Appeal Brief dated September 12, 2006
Reply to Office Action mailed on April 12, 2006
Customer No. 27752

independent claim 1. For this reason, the Final Office Action failed to establish anticipation of the Applicant's independent claim 1. As a result, the Applicant respectfully requests that the Board reverse the 102(b) rejections for independent claim 1 and dependent claims 4, 5 and 7-10 and allow these claims.

"During patent examination, the pending claims must be 'given their broadest reasonable interpretation consistent with the specification.' *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000)." MPEP § 2111. The "words of a claim must be given their plain meaning unless the applicant has provided a clear definition in the specification. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)." MPEP § 2111.01. The Applicant submits that the Final Office Action gave an unreasonably broad interpretation when it cited portions of the Von Gompel reference against elements in the Applicant's independent claim 1.

The Applicant's independent claim 1, as currently amended, recites in part an ear panel "wherein said ear panel waist edge has a first lateral width, and said ear panel leg opening edge has a second lateral width, said second lateral width greater than said first lateral width." The Applicant points out that the Amendment of July 12, 2006 amended this portion of claim 1 replacing the term "dimension" with the term "width." Support for this amendment is found at least on page 17, lines 18-19 of the specification of the Application as originally filed. The Applicant also points out that the Amendment of July 12, 2006 further amended the above-cited portion of claim 1 by replacing the term "exceeding" with the term "greater than."

Appl. No. 09/700,561
Docket No. AA315X
Appeal Brief dated September 12, 2006
Reply to Office Action mailed on April 12, 2006
Customer No. 27752

The Applicant submits that the specification and figures of the Application, as originally filed, provide clear definitions for the above-cited elements of the Applicant's independent claim 1. "The term 'panel' is used herein to denote an area or element of the pull-on diaper." (Application, page 7, line 6.) "In a preferred embodiment, the ear panel 10 and 11 is rendered extensible in the entire area of the ear panel 10 and 11 to form the extensible ear 46 and 48 by the side elastic material 70." (Application, page 16, lines 28-30 and Figure 6.) "The extensible ear 46 and 48 has a lateral width L1 between the inner side edge 46C and 48C and the outer side edge 46D and 48D proximate the lower end edge 46B and 48B, and a lateral width L2 between the inner side edge 46C and 48C and the outer side edge 46D and 48D proximate the higher end edge 46A and 48A. The lateral width between the inner side edge and the outer side edge is the width between the inner side edge 46C and 48C and the outer side edge 46D and 48D in the lateral direction perpendicular to the longitudinal center line 100." (Application, page 17, lines 9-16 and Figure 6.) In the embodiment illustrated in the Applicant's Figure 6, the "lateral width L1 is greater than the lateral width L2." (Application, page 17, lines 18-19 and Figure 6.) The Applicant points out that this portion of the specification corresponds with the Applicant's independent claim 1 as follows: L2 corresponds with the claim 1 term "first lateral width" and L1 corresponds with the claim 1 term "second lateral width."

The Final Office Action cited portions of the embodiment of Figure 5 of the Von Gompel reference against the ear panel element of the Applicant's independent claim 1. (Final Office Action, page 2, paragraph 2 – page 4, carryover paragraph.) The Final Office Action included a copy of Figure 5 of the Von Gompel reference, along with labels

Appl. No. 09/700,561
Docket No. AA315X
Appeal Brief dated September 12, 2006
Reply to Office Action mailed on April 12, 2006
Customer No. 27752

apparently provided by the Examiner to illustrate which portions of Figure 5 were cited against the ear panel element of the Applicant's claim 1. (Final Office Action, page 3.)

The Final Office Action also stated:

With respect to the applicant's amendment to claim 1 which now requires a first and second lateral dimension with the second lateral dimension exceeding the first lateral dimension, the examiner maintains the current rejection and refers to claim 5. The examiner contends that any dimension or portion thereof extending in the lateral direction along what is considered as the ear panel may be considered the ear panel waist edge and any dimension or portion thereof extending in the lateral direction along what is considered to be the ear panel leg opening edge will meet the claimed limitations. The examiner considers the second lateral dimension to be that portion of the ear panel leg opening edge that exceeds the ear panel waist edge.

(Page 5, lines 10-18.)

The Applicant submits that the above citation by the Final Office Action of "any dimension or portion thereof extending in the lateral direction" from the embodiment of Figure 5 of the Von Gompel reference against the "first lateral width" and the "second lateral width" elements of the Applicant's independent claim 1 is unreasonably broad because this characterization by the Final Office Action disregards the clear definitions for the Applicant's claim elements, provided in the Applicant's specification. The Applicant submits that "any dimension or portion thereof extending in the lateral direction" differs from a "width between the inner side edge 46C and 48C and the outer side edge 46D and 48D in the lateral direction perpendicular to the longitudinal center line 100" as defined in the Applicant's specification. (Page 17, lines 14-16.)

From the Applicant's review, the Von Gompel reference does not appear to describe an ear panel "wherein said ear panel waist edge has a first lateral width, and said

Appl. No. 09/700,561
Docket No. AA315X
Appeal Brief dated September 12, 2006
Reply to Office Action mailed on April 12, 2006
Customer No. 27752

ear panel leg opening edge has a second lateral width, said second lateral width greater than said first lateral width" as recited in part in the Applicant's independent claim 1. Therefore, the Von Gompel reference does not describe each and every claim limitation recited in the Applicant's independent claim 1. For this reason, the Final Office Action failed to establish anticipation of the Applicant's independent claim 1. As a result, the Applicant respectfully requests that the Board reverse the 102(b) rejections for independent claim 1 and dependent claims 4, 5 and 7-10 and allow these claims.

Appl. No. 09/700,361
DocId No. AA315X
Appcal Brief dated September 12, 2006
Reply to Office Action mailed on April 12, 2006
Customer No. 27752

RECEIVED
CENTRAL FAX CENTER
SEP 12 2006

SUMMARY

In view of all of the above, it is respectfully submitted that claims 1, 4, 5 and 7-10 have been improperly rejected under 35 U.S.C. § 102(b) in light of the reasoning and analysis given in the Final Office Action. In light of all of the analysis and discussion provided above, the Applicant respectfully requests that the Honorable Board of Patent Appeals and Interferences reverse the rejections of claims 1, 4, 5 and 7-10 and remand the Application to the Examiner with instructions that these claims be allowed over the cited art.

Respectfully submitted,

Charles R. Ware

Date: September 12, 2006
Customer No. 27752

Charles R. Ware
Registration No. 54,881
(513) 634-5042

Appl. No. 09/700,561
Docket No. AA315X
Appeal Brief dated September 12, 2006
Reply to Office Action mailed on April 12, 2006
Customer No. 27752

RECEIVED
CENTRAL FAX CENTER

SEP 12 2006

CLAIMS APPENDIX

1. (Previously Presented) A disposable garment having a front region, a back region, a crotch region between the front region and the back region, the disposable garment comprising:

a chassis having a topsheet, a backsheet joined with the topsheet, and an absorbent core interposed between the topsheet and the backsheet, the chassis having a central panel having a waist edge and side edges, an ear panel having a waist edge and a leg opening edge, wherein said ear panel waist edge has a first lateral width, and said ear panel leg opening edge has a second lateral width, said second lateral width greater than said first lateral width, said chassis further having a waistband panel in the front region and the back region, wherein the ear panel extends laterally outwardly from each side edge of the central panel, and the waistband panel extends longitudinally outwardly from the waist edge of the central panel and the waist edge of the ear panel,

a waist elastomeric material joined to and extending continuously along the waistband panels in the front region and the back region so as to form a continuous extensible waistband in the front region and the back region,

a side elastomeric material joined to the ear panel so as to form extensible ears, wherein said side elastomeric material is disposed over substantially all

Appl. No. 09/700,561
Docket No. AA315X
Appeal Brief dated September 12, 2006
Reply to Office Action mailed on April 12, 2006
Customer No. 27752

of said ear panel to provide extensibility extending from said leg opening edge to said waist edge, and wherein the side elastomeric material and the waist elastomeric material are separate elements and are disposed so as not to overlap to each other, and

seams joining said ear panel to a corresponding portion in the opposite front or back region so as to form two leg openings and a waist opening such that the extensible waistbands form a continuous extensible waist feature.

4. (Original) The disposable garment of Claim 1 wherein the extensible ear is formed from a "zero strain" stretch laminate.
5. (Original) The disposable garment of Claim 1 wherein the waist elastomeric materials comprise two separate elements, one of which is joined to the waistband panel in the front region, the other of which is joined to the waistband panel in the back region, wherein the two elements are connected to each other at the seams.
7. (Original) The disposable garment of Claim 1 wherein the backsheet comprises an inner barrier film and a nonwoven outer cover, and wherein the nonwoven outer cover is superposed outside the inner barrier film.
8. (Original) The disposable garment of Claim 7 wherein the extensible waistband comprises an extended portion of the outer cover and the waist elastomeric material.

Appl. No. 09/700,561
Docket No. AA315X
Appeal Brief dated September 12, 2006
Reply to Office Action mailed on April 12, 2006
Customer No. 27752

9. (Original) The disposable garment of Claim 7 wherein the extensible ear comprises an extended portion of the outer cover and the side elastomeric material.
10. (Original) The disposable garment of Claim 1 wherein the waist elastomeric material is superposed inside an innermost surface of the garment.

Appl. No. 09/700,561
Docket No. AA315X
Appeal Brief dated September 12, 2006
Reply to Office Action mailed on April 12, 2006
Customer No. 27752

EVIDENCE APPENDIX

There is no information for this appendix.

Appl. No. 09/700,561
Docket No. AA315X
Appeal Brief dated September 12, 2006
Reply to Office Action mailed on April 12, 2006
Customer No. 27752

RELATED PROCEEDINGS APPENDIX

There is no information for this appendix.